IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5793 OF 2004

Hygino Rozariao & Ors. ...Petitioners

Versus

Roz-A-Rio Co-op. Housing Society Ltd. & Others. ...Respondents

.....

Mr. Bipin Joshi, counsel for Petitioners

Mr. Navin Parikh i/b M/s. Federal & Rashimikant for Respondents.

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CORAM: B. H. MARLAPALLE, J.

DATED: 4TH FEBRUARY, 2005

P.C.:-

1. Heard Mr. Joshi, the learned counsel for the petitioners who were impleaded as defendants in Short Cause Suit No. 3007 of 2003. The plaintiffs have contended that the defendants were not complying with the statutory requirements pursuant to the agreement entered between the parties and, therefore, the suit was filed for declaration and for performance of statutory obligations as developers/builders. At the instance of the defendants, a preliminary issue regarding the pecuniary jurisdiction was framed because the defendants contended that relief (a) was to be read separately as compared to reliefs (b) and (c) in the plaint and if so read, the suit filed was for specific performance of contract of lease and

therefore, the prayers so made attracted the provisions of Section 6(iv) (d) and Section 6(iv) (h) of the Bombay Court Fees Act, 1959. The learned Judge of the City Civil Court by the impugned order dated 8.4.2004 has rejected these contentions.

2. Reference has been made to the decisions of this Court in the case of **Maria Philomina Pereira Vs. M/s. Rodrigues Construction reported in AIR 1991 Bombay 27,** and in the case of **Dilip Bastimal Jain Vs. Baban Bhanudas Kamble & Ors. reported in AIR 2002 Bombay 279.** The Court below held that the prayers will have to be read together and prayer (a) was the substantial relief whereas the prayers (b) and (c) were consequential reliefs. The prayer made attracted the provisions of Section 6(iv) (j) of the Bombay Court Fees Act, 1959.

3. The view taken by the trial Court is in consonance with the decisions of this Court as referred to hereinabove and it cannot be termed as perverse or grossly erroneous calling for an interference under Article 227 of the Constitution.

4. The petition is, therefore, rejected summarily.